

AMENDED IN SENATE FEBRUARY 21, 2006

SENATE BILL

No. 1177

Introduced by Senator Hollingsworth
(Principal coauthor: Assembly Member Jones)

January 13, 2006

An act to amend Section 65915 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

SB 1177, as amended, Hollingsworth. Housing: density bonus.

The Planning and Zoning Law requires, when a developer of housing proposes a housing development within the jurisdiction of the local government, that the city, county, or city and county provide the developer with a density bonus or other incentives or concessions for the production of lower income housing units or the donation of land within the development if the developer meets certain requirements, including a requirement that the developer agrees to construct a specified percentage of the total units for specified income households or qualifying residents.

Existing law prohibits a city, county, and city and county from applying a development standard that has the effect of precluding the construction of a development meeting the affordable housing criteria that entitles the developer to a density bonus and incentives or concessions. Existing law authorizes a developer to apply for a waiver or reduction of development standards and requires the developer to show that the waiver or modification is necessary to make the housing units economically feasible.

This bill would delete the requirement that the developer show that the waiver or modification of development standards is necessary to make the housing units economically feasible.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 65915 of the Government Code is
2 amended to read:

3 65915. (a) When an applicant seeks a density bonus for a
4 housing development within, or for the donation of land for
5 housing within, the jurisdiction of a city, county, or city and
6 county, that local government shall provide the applicant
7 incentives or concessions for the production of housing units and
8 child care facilities as prescribed in this section. All cities,
9 counties, or cities and counties shall adopt an ordinance that
10 specifies how compliance with this section will be implemented.

11 (b) (1) A city, county, or city and county shall grant one
12 density bonus, the amount of which shall be as specified in
13 subdivision ~~(g)~~, (f), and incentives or concessions, as described in
14 subdivision (d), when an applicant for a housing development
15 seeks and agrees to construct a housing development, excluding
16 any units permitted by the density bonus awarded pursuant to this
17 section, that will contain at least any one of the following:

18 (A) Ten percent of the total units of a housing development for
19 lower income households, as defined in Section 50079.5 of the
20 Health and Safety Code.

21 (B) Five percent of the total units of a housing development
22 for very low income households, as defined in Section 50105 of
23 the Health and Safety Code.

24 (C) A senior citizen housing development as defined in
25 Sections 51.3 and 51.12 of the Civil Code, or mobilehome park
26 that limits residency based on age requirements for housing for
27 older persons pursuant to Section 798.76 or 799.5 of the Civil
28 Code.

29 (D) Ten percent of the total dwelling units in a common
30 interest development as defined in Section 1351 of the Civil
31 Code for persons and families of moderate income, as defined in

1 Section 50093 of the Health and Safety Code, provided that all
2 units in the development are offered to the public for purchase.

3 (2) For purposes of calculating the amount of the density
4 bonus pursuant to subdivision (f), the applicant who requests a
5 density bonus pursuant to this subdivision shall elect whether the
6 bonus shall be awarded on the basis of subparagraph (A), (B),
7 (C), or (D) of paragraph (1).

8 (c) (1) An applicant shall agree to, and the city, county, or city
9 and county shall ensure, continued affordability of all low-and
10 very low income units that qualified the applicant for the award
11 of the density bonus for 30 years or a longer period of time if
12 required by the construction or mortgage financing assistance
13 program, mortgage insurance program, or rental subsidy
14 program. Rents for the lower income density bonus units shall be
15 set at an affordable rent as defined in Section 50053 of the Health
16 and Safety Code. Owner-occupied units shall be available at an
17 affordable housing cost as defined in Section 50052.5 of the
18 Health and Safety Code.

19 (2) An applicant shall agree to, and the city, county, or city
20 and county shall ensure that, the initial occupant of the
21 moderate-income units that are directly related to the receipt of
22 the density bonus in the common interest development, as
23 defined in Section 1351 of the Civil Code, are persons and
24 families of moderate income, as defined in Section 50093 of the
25 Health and Safety Code, and that the units are offered at an
26 affordable housing cost, as that cost is defined in Section 50052.5
27 of the Health and Safety Code. The local government shall
28 enforce an equity-sharing agreement, unless it is in conflict with
29 the requirements of another public funding source or law. The
30 following apply to the equity-sharing agreement:

31 (A) Upon resale, the seller of the unit shall retain the value of
32 any improvements, the downpayment, and the seller's
33 proportionate share of appreciation. The local government shall
34 recapture any initial subsidy and its proportionate share of
35 appreciation, which shall then be used within three years for any
36 of the purposes described in subdivision (e) of Section 33334.2
37 of the Health and Safety Code that promote homeownership.

38 (B) For purposes of this subdivision, the local government's
39 initial subsidy shall be equal to the fair market value of the home
40 at the time of initial sale minus the initial sale price to the

1 moderate-income household, plus the amount of any
2 downpayment assistance or mortgage assistance. If upon resale
3 the market value is lower than the initial market value, then the
4 value at the time of the resale shall be used as the initial market
5 value.

6 (C) For purposes of this subdivision, the local government's
7 proportionate share of appreciation shall be equal to the ratio of
8 the initial subsidy to the fair market value of the home at the time
9 of initial sale.

10 (d) (1) An applicant for a density bonus pursuant to
11 subdivision (b) may submit to a city, county, or city and county a
12 proposal for the specific incentives or concessions that the
13 applicant requests pursuant to this section, and may request a
14 meeting with the city, county, or city and county. The city,
15 county, or city and county shall grant the concession or incentive
16 requested by the applicant unless the city, county, or city and
17 county makes a written finding, based upon substantial evidence,
18 of either of the following:

19 (A) The concession or incentive is not required in order to
20 provide for affordable housing costs, as defined in Section
21 50052.5 of the Health and Safety Code, or for rents for the
22 targeted units to be set as specified in subdivision (c).

23 (B) The concession or incentive would have a specific adverse
24 impact, as defined in paragraph (2) of subdivision (d) of Section
25 65589.5, upon public health and safety or the physical
26 environment or on any real property that is listed in the
27 California Register of Historical Resources and for which there is
28 no feasible method to satisfactorily mitigate or avoid the specific
29 adverse impact without rendering the development unaffordable
30 to low- and moderate-income households.

31 (2) The applicant shall receive the following number of
32 incentives or concessions:

33 (A) One incentive or concession for projects that include at
34 least 10 percent of the total units for lower income households, at
35 least 5 percent for very low income households, or at least 10
36 percent for persons and families of moderate income in a
37 common interest development.

38 (B) Two incentives or concessions for projects that include at
39 least 20 percent of the total units for lower income households, at
40 least 10 percent for very low income households, or at least 20

1 percent for persons and families of moderate income in a
2 common interest development.

3 (C) Three incentives or concessions for projects that include at
4 least 30 percent of the total units for lower income households, at
5 least 15 percent for very low income households, or at least 30
6 percent for persons and families of moderate income in a
7 common interest development.

8 (3) The applicant may initiate judicial proceedings if the city,
9 county, or city and county refuses to grant a requested density
10 bonus, incentive, or concession. If a court finds that the refusal to
11 grant a requested density bonus, incentive, or concession is in
12 violation of this section, the court shall award the plaintiff
13 reasonable attorney's fees and costs of suit. Nothing in this
14 subdivision shall be interpreted to require a local government to
15 grant an incentive or concession that has a specific, adverse
16 impact, as defined in paragraph (2) of subdivision (d) of Section
17 65589.5, upon health, safety, or the physical environment, and
18 for which there is no feasible method to satisfactorily mitigate or
19 avoid the specific adverse impact. Nothing in this subdivision
20 shall be interpreted to require a local government to grant an
21 incentive or concession that would have an adverse impact on
22 any real property that is listed in the California Register of
23 Historical Resources. The city, county, or city and county shall
24 establish procedures for carrying out this section, that shall
25 include legislative body approval of the means of compliance
26 with this section. The city, county, or city and county shall also
27 establish procedures for waiving or modifying development and
28 zoning standards that would otherwise inhibit the utilization of
29 the density bonus on specific sites. These procedures shall
30 include, but not be limited to, such items as minimum lot size,
31 side yard setbacks, and placement of public works
32 improvements.

33 (e) In no case may a city, county, or city and county apply any
34 development standard that will have the effect of precluding the
35 construction of a development meeting the criteria of subdivision
36 (b) at the densities or with the concessions or incentives
37 permitted by this section. An applicant may submit to a city,
38 county, or city and county a proposal for the waiver or reduction
39 of development standards and may request a meeting with the
40 city, county, or city and county. If a court finds that the refusal to

grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. This subdivision does not require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. This subdivision does not require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources.

(f) For the purposes of this chapter, "density bonus" means a density increase over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the applicant to the city, county, or city and county. The applicant may elect to accept a lesser percentage of density bonus. The amount of density bonus to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b).

(1) For housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
17	30.5
18	32
19	33.5
20	35

(2) For housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Very Low Income Units	Percentage Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

(3) For housing developments meeting the criteria of subparagraph (C) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent.

(4) For housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Moderate-Income Units	Percentage Density Bonus
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21
27	22
28	23

	Percentage Moderate-Income Units	Percentage Density Bonus
1		
2	29	24
3	30	25
4	31	26
5	32	27
6	33	28
7	34	29
8	35	30
9	36	31
10	37	32
11	38	33
12	39	34
13	40	35

14

15 (5) All density calculations resulting in fractional units shall
16 be rounded up to the next whole number. The granting of a
17 density bonus shall not be interpreted, in and of itself, to require
18 a general plan amendment, local coastal plan amendment, zoning
19 change, or other discretionary approval. As used in subdivision
20 (b), “total units” or “total dwelling units” does not include units
21 permitted by a density bonus awarded pursuant to this section or
22 any local law granting a greater density bonus. The density bonus
23 provided by this section shall apply to housing developments
24 consisting of five or more dwelling units.

25 (g) (1) When an applicant for a tentative subdivision map,
26 parcel map, or other residential development approval donates
27 land to a city, county, or city and county as provided for in this
28 subdivision, the applicant shall be entitled to a 15-percent
29 increase above the otherwise maximum allowable residential
30 density under the applicable zoning ordinance and land use
31 element of the general plan for the entire development, as
32 follows:

33

	Percentage Very Low Income	Percentage Density Bonus
34		
35	10	15
36	11	16
37	12	17
38	13	18
39	14	19
40	15	20

	Percentage Very Low Income	Percentage Density Bonus
1		
2	16	21
3	17	22
4	18	23
5	19	24
6	20	25
7	21	26
8	22	27
9	23	28
10	24	29
11	25	30
12	26	31
13	27	32
14	28	33
15	29	34
16	30	35

17

18 (2) This increase shall be in addition to any increase in density
19 mandated by subdivision (b), up to a maximum combined
20 mandated density increase of 35 percent if an applicant seeks
21 both the increase required pursuant to this subdivision and
22 subdivision (b). All density calculations resulting in fractional
23 units shall be rounded up to the next whole number. This
24 subdivision does not enlarge or diminish the authority of a city,
25 county, or city and county to require a developer to donate land
26 as a condition of development. An applicant shall be eligible for
27 the increased density bonus described in this subdivision if all of
28 the following conditions are met:

29 (A) The applicant donates and transfers the land no later than
30 the date of approval of the final subdivision map, parcel map, or
31 residential development application.

32 (B) The developable acreage and zoning classification of the
33 land being transferred are sufficient to permit construction of
34 units affordable to very low income households in an amount not
35 less than 10 percent of the number of residential units of the
36 proposed development.

37 (C) The transferred land is at least one acre in size or of
38 sufficient size to permit development of at least 40 units, has the
39 appropriate general plan designation, is appropriately zoned for
40 development as affordable housing, and is or will be served by

1 adequate public facilities and infrastructure. The land shall have
2 appropriate zoning and development standards to make the
3 development of the affordable units feasible. No later than the
4 date of approval of the final subdivision map, parcel map, or of
5 the residential development, the transferred land shall have all of
6 the permits and approvals, other than building permits, necessary
7 for the development of the very low income housing units on the
8 transferred land, except that the local government may subject
9 the proposed development to subsequent design review to the
10 extent authorized by subdivision (i) of Section 65583.2 if the
11 design is not reviewed by the local government prior to the time
12 of transfer.

13 (D) The transferred land and the affordable units shall be
14 subject to a deed restriction ensuring continued affordability of
15 the units consistent with paragraphs (1) and (2) of subdivision
16 (c), which shall be recorded on the property at the time of
17 dedication.

18 (E) The land is transferred to the local agency or to a housing
19 developer approved by the local agency. The local agency may
20 require the applicant to identify and transfer the land to the
21 developer.

22 (F) The transferred land shall be within the boundary of the
23 proposed development or, if the local agency agrees, within
24 one-quarter mile of the boundary of the proposed development.

25 (h) (1) When an applicant proposes to construct a housing
26 development that conforms to the requirements of subdivision (b)
27 and includes a child care facility that will be located on the
28 premises of, as part of, or adjacent to, the project, the city,
29 county, or city and county shall grant either of the following:

30 (A) An additional density bonus that is an amount of square
31 feet of residential space that is equal to or greater than the
32 amount of square feet in the child care facility.

33 (B) An additional concession or incentive that contributes
34 significantly to the economic feasibility of the construction of the
35 child care facility.

36 (2) The city, county, or city and county shall require, as a
37 condition of approving the housing development, that the
38 following occur:

39 (A) The child care facility shall remain in operation for a
40 period of time that is as long as or longer than the period of time

1 during which the density bonus units are required to remain
2 affordable pursuant to subdivision (c).

3 (B) Of the children who attend the child care facility, the
4 children of very low income households, lower income
5 households, or families of moderate income shall equal a
6 percentage that is equal to or greater than the percentage of
7 dwelling units that are required for very low income households,
8 lower income households, or families of moderate income
9 pursuant to subdivision (b).

10 (3) Notwithstanding any requirement of this subdivision, a
11 city, county, or a city and county shall not be required to provide
12 a density bonus or concession for a child care facility if it finds,
13 based upon substantial evidence, that the community has
14 adequate child care facilities.

15 (4) “Child care facility,” as used in this section, means a child
16 day care facility other than a family day care home, including,
17 but not limited to, infant centers, preschools, extended day care
18 facilities, and schoolage child care centers.

19 (i) “Housing development,” as used in this section, means one
20 or more groups of projects for residential units constructed in the
21 planned development of a city, county, or city and county. For
22 the purposes of this section, “housing development” also includes
23 a subdivision or common interest development, as defined in
24 Section 1351 of the Civil Code, approved by a city, county, or
25 city and county and consists of residential units or unimproved
26 residential lots and either a project to substantially rehabilitate
27 and convert an existing commercial building to residential use or
28 the substantial rehabilitation of an existing multifamily dwelling,
29 as defined in subdivision (d) of Section 65863.4, where the result
30 of the rehabilitation would be a net increase in available
31 residential units. For the purpose of calculating a density bonus,
32 the residential units do not have to be based upon individual
33 subdivision maps or parcels. The density bonus shall be
34 permitted in geographic areas of the housing development other
35 than the areas where the units for the lower income households
36 are located.

37 (j) The granting of a concession or incentive shall not be
38 interpreted, in and of itself, to require a general plan amendment,
39 local coastal plan amendment, zoning change, or other

1 discretionary approval. This provision is declaratory of existing
2 law.

3 (k) For the purposes of this chapter, concession or incentive
4 means any of the following:

5 (1) A reduction in site development standards or a
6 modification of zoning code requirements or architectural design
7 requirements that exceed the minimum building standards
8 approved by the California Building Standards Commission as
9 provided in Part 2.5 (commencing with Section 18901) of
10 Division 13 of the Health and Safety Code, including, but not
11 limited to, a reduction in setback and square footage
12 requirements and in the ratio of vehicular parking spaces that
13 would otherwise be required that results in identifiable,
14 financially sufficient, and actual cost reductions.

15 (2) Approval of mixed use zoning in conjunction with the
16 housing project if commercial, office, industrial, or other land
17 uses will reduce the cost of the housing development and if the
18 commercial, office, industrial, or other land uses are compatible
19 with the housing project and the existing or planned development
20 in the area where the proposed housing project will be located.

21 (3) Other regulatory incentives or concessions proposed by the
22 developer or the city, county, or city and county that result in
23 identifiable, financially sufficient, and actual cost reductions.

24 This subdivision does not limit or require the provision of
25 direct financial incentives for the housing development,
26 including the provision of publicly owned land, by the city,
27 county, or city and county, or the waiver of fees or dedication
28 requirements.

29 (l) This section does not supersede or in any way alter or
30 lessen the effect or application of the California Coastal Act
31 (Division 20 (commencing with Section 30000) of the Public
32 Resources Code.

33 (m) This section does not prohibit a city, county, or city and
34 county from granting a density bonus greater than what is
35 described in this section for a development that meets the
36 requirements of this section or from granting a proportionately
37 lower density bonus than what is required by this section for
38 developments that do not meet the requirements of this section.

39 (n) For purposes of this section, the following definitions shall
40 apply:

1 (1) “Development standard” includes site or construction
2 conditions that apply to a residential development pursuant to
3 any ordinance, general plan element, specific plan, charter
4 amendment, or other local condition, law, policy, resolution, or
5 regulation.

6 (2) “Maximum allowable residential density” means the
7 density allowed under the zoning ordinance, or if a range of
8 density is permitted, means the maximum allowable density for
9 the specific zoning range applicable to the project.

10 (o) (1) Upon the request of the developer, no city, county, or
11 city and county shall require a vehicular parking ratio, inclusive
12 of handicapped and guest parking, of a development meeting the
13 criteria of subdivision (b), that exceeds the following ratios:

14 (A) Zero to one bedrooms: one onsite parking space.

15 (B) Two to three bedrooms: two onsite parking spaces.

16 (C) Four and more bedrooms: two and one-half parking
17 spaces.

18 (2) If the total number of parking spaces required for a
19 development is other than a whole number, the number shall be
20 rounded up to the next whole number. For purposes of this
21 subdivision, a development may provide “onsite parking”
22 through tandem parking or uncovered parking, but not through
23 onstreet parking.

24 (3) This subdivision shall apply to a development that meets
25 the requirements of subdivision (b) but only at the request of the
26 applicant. An applicant may request additional parking incentives
27 or concessions beyond those provided in this section, subject to
28 subdivision (d).